



SUBCONTRACTOR'S LETTER OF UNDERTAKING

Attachment to the application for a Buyer Credit Guarantee

Complete name and address of the company giving the undertaking

Company XXX
Contact person XXX
Street and house no. XXX
P. O. Box XXX
Postcode and town XXX

We are aware that

XXX

- hereinafter: Bank -

has applied or will apply for a Buyer Credit Guarantee of the Federal Government to secure a loan to

XXX

- hereinafter: Foreign Debtor.

The purpose of the loan is to finance a transaction concerning the delivery of goods and/or the provision of services between

XXX

- hereinafter: Vendor -

and the ultimate foreign buyer

xxx

- hereinafter: Buyer -

for the supply of the following goods and/or services:

XXX

XXX

XXX

XXX

As subcontractor of the Vendor/a supplier of the Vendor* we will supply the following goods and/or services, which are essential for the performance of the delivery/service contract:

xxx

Financing these supplies and/or services with a loan and cover for that loan under a Buyer Credit Guarantee of the Federal Republic of Germany is also in our interest.

*Delete as appropriate

In the event that the Federal Government assumes a Buyer Credit Guarantee in favour of the Bank, we hereby irrevocably commit ourselves vis-à-vis the Federal Government to the following:

1. a) We will completely and correctly describe in writing all material circumstances related to our share in the supplies and/or services (e.g. origin of goods, subcontracted foreign supplies) which may have a bearing on the assumption of the Buyer Credit Guarantee to the Vendor and, if necessary, to the Bank and immediately amend the information provided if there are any subsequent changes or modifications regarding our involvement in the supplies/services.
- b) We will notify the Federal Government or its agent in writing of any risk-aggravating factors as far as they become known to us before the full disbursement of the buyer credit. Such risk-aggravating factors are in particular that
 - (1) the Buyer or the Foreign Debtor defaults on his payments or asks for an extension of the payment period;
 - (2) the financial situation, payment record or general market reputation of the Buyer, the Debtor or the Guarantor worsens, or the Buyer offers to discharge the debt in a manner that differs from his contractual obligations.
- c) We will, at any time, inform the Federal Government or its agent about the details of our contract with the Vendor and the state of its implementation as well as any other circumstances which may be of importance for the Federal Government.
2. a) In the event that we fail to perform our duty to provide information and amend it if necessary (item 1. a), we will indemnify the Federal Government for its obligation to pay a claim from the Bank under the terms of the Buyer Credit Guarantee unless the incomplete or incorrect information constituting a breach of our duties had no influence on the Federal Government's decision to assume the Buyer Credit Guarantee. We are not liable to indemnify the Federal Government if we were not aware or could not have been aware that the information provided was incorrect or incomplete.
- b) If, due to a failure to exercise due care, we violate our duty to report any increases of risk (item 1. b) or to inform, upon request, the Federal Government about the state of implementation of our contract with the Vendor or any other circumstances which may be relevant to the Federal Government (item 1. c), we will indemnify the Federal Government for its obligation to pay a claim, unless the breach of duty neither caused a loss nor is of such nature as to expect that it may result in a loss.
3. The Federal Government may limit our obligation to indemnify it pursuant to item 2 above according to the circumstances of the individual case, particularly taking into account the risk which has arisen and the seriousness of the breach of duties.
4. If any criminal offence, in particular bribery, was committed in connection with the conclusion of the delivery/service contract, we will indemnify the Federal Government for its obligation to pay a claim unless we neither knew nor could be expected to know about such offences.
5. If the Foreign Debtor refuses to meet his obligations under the loan agreement citing warranty claims he has against the Vendor, we will indemnify the Federal Government for its obligation to pay a claim from the Bank under the Buyer Credit Guarantee. We are not liable to indemnify if the facts on which the warranty claim is based cannot be attributed to our share in the deliveries and/or services or if we are not or no longer under any warranty obligations vis-à-vis our contractual partner (Vendor or supplier of the Vendor).
6. We undertake to reimburse the Federal Government for any indemnified loan amount under the Buyer Credit Guarantee which was meant as payment under the delivery/service contract if such loan amount was disbursed before the services agreed were performed. The aforementioned shall not apply if we have either performed our duties vis-à-vis the Buyer or the warranty period in the delivery/service contract (which may not be less than two years) has expired so that the Buyer may not assert any warranty claims.

We will comply with this obligation towards the Federal Government if and when, following a request by the Federal Government, we fail to show credibly that we performed our obligations under the delivery/service contract within a period of three months.

7. **Only applicable if a disbursement of the buyer credit pursuant to progress (progress payments) is documented in the guarantee**

Where, with the consent the Federal Government, it is stipulated that the loan shall already be disbursed to the Vendor prior to the respective supply of goods or the provision of services, we further undertake

- a) not to suspend or discontinue the performance of our contractual obligations towards the Vendor without the consent of the Federal Government, unless the Vendor is in arrears with his payments to us,
- b) to indemnify the Federal Government for its obligation to pay a claim from the Bank under the Buyer Credit Guarantee in the event that the manufacturing process is discontinued and the Federal Government would, in principle, not be obliged to indemnify the Vendor under manufacturing risk cover - irrespective of the actual existence of such cover.

8. **Maximum amount of liability**

Our obligation to indemnify the Federal Government pursuant to items 2, 4 and 5 shall be limited to the amount of our payment claim against the Vendor under the subcontract. The obligation to indemnify the Federal Republic pursuant to item 6 shall be further limited to the payments received from the Vendor or directly from the Bank.

9. We will comply with our obligation to indemnify the Federal Government on first written demand.

10. We are aware of the Vendor's Letter of Undertaking. If the Vendor is held liable under it and we are also liable to the Federal Government under our obligations to indemnify, we and the Vendor shall be jointly and severally liable to the Federal Government (in this case too, the limitation of our liability according to item 8 applies).

XXX

Place and Date

XXX

Exporter's signature/company stamp

Explanations and FAQs regarding the Letter of Undertaking can be found at agaportal.de/en -> Downloads -> Category "[letters of undertaking](#)".